NO. 85-7165

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ANTHONY GRANDISON, SR.

Petitioner

v.

STATE OF MARYLAND,

Respondent

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

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Nancy L. Cook

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ON WRIT OF CERTIORARI

TO THE COURT OF APPEALS OF MARYLAND

MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

The Petitioner, Anthony Grandison, Sr., who is indigent and who has been found to meet the qualifications for representation by the Office of the Public Defender for the State of Maryland, asks leave to file the attached Petition for Writ of Certiorari to the Court of Appeals of Maryland without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46.

Counsel's affidavit in support of this Petition is attached hereto.

Nancy L. Cook
Assigned Public Defender
Practicing Law Center
Washington College of Law
4400 Massachusetts Ave., N.W.
Washington, D.C. 20016
(202) 885-1500

Counsel for Petitioner

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Respondent

ON WRIT OF CERTIORARI

TO THE COURT OF APPEALS OF MARYLAND

AFFIDAVIT IN SUPPORT OF MOTION TO
PROCEED ON APPEAL IN FORMA PAUPERIS

I, Nancy L. Cook, being first duly sworn, depose and say that I am counsel for the Petitioner in the above captioned case. Before the decision of the Maryland Court of Appeals was rendered in the above captioned case, Petitioner was transferred to federal custody and transported to the federal penitentiary in Lewisburg, Pennsylvania, where he remains incarcerated. Counsel has contacted Petitioner and asked that he execute and forward an

affidavit to support his Motion For Leave To Proceed in Forma Pauperis. Petitioner's personally executed affidavit has not to date been received, however,

In support of Petitioner's motion, counsel states, on information and belief, that because of Petitioner's poverty he is unable to pay the costs of these proceedings or to give security therefore and that Petitioner is entitled to redress.

Counsel further swears upon information and belief that the following statements relating to Petitioner's ability to pay the cost of prosecuting his appeal are true:

1. Although Petitioner represented himself at trial, he qualified for representation and payment of costs as an indigent at trial. Standby counsel was appointed by the trial court in February, 1984 to assist Petitioner, and standby counsel's fees and expenses were paid for by the Office of the Public Defender for the State of Maryland.

2. Petitioner qualified for representation as an indigent under the standards of the Maryland Public Defender's Office for purposes of appeal. Present counsel, who represented Petitioner on appeal, was appointed to the case as an assigned Public Defender under the auspices of the state public defender office.

3. Petitioner also qualified for representation as an indigent in the federal trial and appellate courts from 1983 to the present time. Petitioner had the assistance of a court appointed standby attorney at his trial on the federal charges related to this case and has been represented on appeal by appointed counsel since 1985.

4. Petitioner has been incarcerated in either state or federal penal institutions continually since November of 1983. He has consequently been unable to obtain the funds necessary to pursue his appeal.

I understand that a false statement in this affidavit will subject me to penalties for perjury.

Nancy L. Cook

Nancy L. Cook

Subscribed and sworn to before me, a Notory Public, this 2nd day of June, 1986.

Notary Public

My Commission Expires April 14, 1989

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OCTOBER TERM, 1985

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Petitioner

v.

STATE OF MARYLAND,

Respondent

ON WRIT OF CERTIORARI

TO THE COURT OF APPEALS OF MARYLAND

NOTICE OF APPEARANCE

MR. CLERK:

Please enter my appearance as counsel for Petitioner in the above captioned case.

Nancy L. Cook

Nancy L. Cook
Assigned Public Defender
Practicing Law Center
Washington College of Law
4400 Massachusetts Ave., N.W.
Washington, D.C. 20016
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Counsel for Petitioner

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ANTHONY GRANDISON, SR.	•	IN THE
Appellant	•	SUPREME COURT OF
v.	•	THE UNITED STATES
STATE OF MARYLAND	•	SEPTEMBER TERM, 1985
Appellee	•	No.

****

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2 day of June, 1986, three copies of the foregoing Petition for Writ of Certiorari were delivered to the Office of the Attorney General, 7 North Calvert Street, The Munsey Building, Baltimore, Maryland 21202.

Nancy L Cook

Nancy L. Cook
Assigned Public Defender
Practicing Law Center
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4400 Massachusetts Ave., N.W.
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(202) 885-1500

Counsel for Petitioner

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

Anthony Grandison, Sr., Petitioner, respectfully requests that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland entered on April 1, 1986, in the case of Anthony Grandison, Sr. v. State of Maryland, Nos. 65 and 108, September Term, 1984.

OPINION BELOW

The opinion of the Court of Appeals of Maryland is reported at ___Md.___, 506 A.2d 580(1985). It is reproduced in Petitioner's Appendix at pages App. 17 et seq.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §1257 (3).

CONSTITUTIONAL PROVISION, STATUTES AND RULES

The following constitutional provisions, statutes and rules, relevant to this case, are reproduced in Petitioner's Appendix:

United States Constitution, Amendments V, VI, VIII, XIV

Maryland Code (1957, 1982 Repl. Vol.), Art. 27, §§412, 413, 414

Maryland Rules of Procedure, Rule 4-343

QUESTIONS PRESENTED

1. Does the denial of a request for legal representation for a capital sentencing in a statutorily bifurcated proceeding constitute a violation of the Sixth Amendment right to the assistance of counsel?

2. Is the right to self representation infringed by the denial to a pro se litigant of personal access to the only potential defense witness available who could exculpate the defendant, absent a finding of necessity for security reasons?

3. Does the Maryland death penalty statute, as construed and applied in Petitioner's case, violate the Eighth and Fourteenth Amendments to the United States Constitution?

4. Do rulings and instructions by the trial court which deprive the jury in a capital case of the power to show compassion or extend mercy to the accused violate the Eighth and Fourteenth Amendments to the United States Constitution?

STATEMENT OF THE CASE

Petitioner, Anthony Grandison, Sr., was indicted by a Baltimore County, Maryland, grand jury for crimes arising out of the shooting deaths of Scott Piechowicz and Susan Carol Kennedy that had occurred on April 28, 1983 in Baltimore County. The indictment, filed on June 30, 1983, charged Petitioner with conspiracy to murder Scott and Cheryl Piechowicz, first degree murder of both Scott Piechowicz and Susan Kennedy, and use of a handgun in the commission of a crime of violence.

Prior to the filing of the State charges, indictments were filed in the U.S. District Court of Maryland charging Petitioner with conspiracy to violate the civil rights of Scott and Cheryl Piechowicz (18 U.S.C. §241) and use of force with intent to obstruct witnesses (18 U.S.C. §1512).

Petitioner was arraigned on July 19, 1983 before the Honorable John F. Fader, II in the Circuit Court for Baltimore County. At that time Petitioner was advised of his right to the assistance of counsel. Petitioner indicated however, that he intended to represent himself. After several hearings in Baltimore County concerning Petitioner's request for "hybrid" representation, it was determined that Petitioner would represent himself.

In the meantime, on September 7, 1983, the State filed a Notice of Intention to Seek a Sentence of Death. Following receipt of that Notice, Petitioner moved to have the case removed from Baltimore County. His request, filed on November 23, 1983, was granted by order dated December 16, 1983. On December 19,

1983, the record was transmitted to the Circuit Court for Somerset County, Maryland.

Prior to the removal of the State case, Petitioner was tried in the United States District Court on the federal charges. He was convicted of those charges on November 1, 1983, and sentenced to life imprisonment plus ten years on December 15, 1983.

Petitioner first appeared in Somerset County on February 3, 1984, at which time he was again advised concerning his right to counsel. Petitioner requested and was granted the assistance of "standby" counsel. An order appointing counsel was filed on February 7, 1984, and on February 15, 1984, H. Warren Crawford entered an appearance in the case.

Trial ran from May 3 through May 22, 1984. Petitioner's motion for judgment of acquittal at the end of the case was denied as to all counts and the case was submitted to the jury, which found Petitioner guilty of all four counts charged in the indictments.

Sentencing was scheduled to begin on May 28, but was postponed for eight days at Petitioner's request. On June 5, the court heard motions relating to the capital proceedings, all of which were denied. On June 6, testimony was presented, arguments made and instructions given to the jury. After the jury retired to deliberate on the murder counts, the court sentenced Petitioner to life imprisonment for the conspiracy conviction and twenty years for the handgun violation consecutive to the life sentence. Both sentences were imposed to run consecutively to the previously imposed life plus ten years in the federal case.

The jury returned verdicts of death for both murder counts. Writs of execution were accordingly filed, but stayed pursuant to Md. Ann. Code, Art. 27, §414 pending review by the Maryland Court of Appeals. Notice of appeal of the conviction and sentences was filed on June 13, 1984.

Petitioner's case was heard by the Maryland Court of Appeals on November 5, 1985. In a reported opinion filed on April 1, 1986, the judgments of the lower court were affirmed.

STATEMENT OF FACTS

On April 28, 1983, at shortly after 3:00 p.m., Scott Piechowicz and his sister-in-law, Susan Kennedy, were shot and killed in the lobby of the Warren House Motel on Reistertown Road in Baltimore County, Maryland, where they were both employed.

At the time the shooting deaths occurred, Petitioner was incarcerated at the Baltimore City Jail, where he was awaiting trial on federal drug charges. Following a joint investigation by federal, state and local authorities, Petitioner was charged with the two murders. It was the State's theory that Petitioner had arranged, from his position at the Baltimore City Jail, to have Scott Piechowicz and his wife Cheryl[1] murdered because the two were expected to be identification witnesses for the government at Petitioner's forthcoming federal trial. The State

---

[1] Cheryl Piechowicz also worked at the Warren House Motel. The prosecutor's theory was that Cheryl's sister, Susan, was working in Cheryl's stead on the day of the shootings and was mistaken for her absent sister.

alleged that Petitioner entered into a conspiracy to accomplish this purpose with at least four others: Vernon Evans; Evans' girlfriend, Charlene Sparrow; Rodney Kelly; and Petitioner's common law wife, Janet Moore.

Petitioner represented himself in the state proceedings. He advised the court of his intention to represent himself when he first appeared before Judge John F. Fader, II in Baltimore County on July 19, 1983. The court told Petitioner that it would notify the Public Defender's Office nevertheless so that Petitioner could avail himself of the services of the Public Defender "at any time throughout these proceedings." The state's attorney later asked the court to clarify whether "there will be counsel for Mr. Grandison should at some point he decide to want counseling." The court's response was affirmative.

At a later hearing, Petitioner requested the appointment of "standby" counsel, explaining that he wished to proceed as in a co-counsel situation, with himself as lead counsel. The Public Defender's office declined to provide representation under those circumstances. The hearing was concluded without resolution of the question. Less than two weeks later, Petitioner appeared before Judge Fader who advised him again of his right to counsel. Although Petitioner did not make a final election at that time, the court went ahead and set dates for motions and trial.

On November 9, 1983, Petitioner again appeared before Judge Fader. At that hearing, extensive discussion took place regarding Petitioner's desire to have some legal assistance at

his trial. Petitioner reiterated that he wanted an attorney who would act "like a co-counsel." The Public Defender's Office again declined to provide representation under the parameters outline by Petitioner. After lengthy discussion, the court advised Petitioner that counsel would either be appointed under terms dictated by the Public Defender's Office or that he would have to represent himself. Petitioner stated that he would not take appointed counsel under the conditions imposed by the Public Defender's Office. The court ruled that Petitioner had chosen the legal equivalent of self-representation.

A final hearing in Baltimore County left the question of counsel still unresolved. Petitioner indicated to the court that he did not wish to make an election on that day.

Petitioner's case was subsequently removed to Somerset County, Maryland. On February 3, 1984, Petitioner appeared before Judge Lloyd Simpkins in the Circuit Court. Judge Simpkins conducted a waiver inquiry, at the end of which Petitioner stated his desire to have "standby" counsel. The court agreed to provide standby counsel, and found that Petitioner had made a knowing, intelligent and intentional waiver of the right to counsel. Standby counsel was thereafter appointed to assist Petitioner.

The State's case against Petitioner was circumstantial and rested in large measure on the testimony of Charlene Sparrow, an alleged co-conspirator and girlfriend of Vernon Evans. Sparrow and other witnesses placed Evans in the lobby of the Warren House Motel shortly before the shootings. Evidence was presented to

establish that Petitioner had had contact with Evans and Janet Moore both prior to and after the shootings and that Petitioner otherwise was linked to other alleged co-conspirators.

Petitioner called a number of witnesses during his case, most of whom were called for impeachment purposes. Petitioner also considered the possibility of calling Rodney Kelly as a witness on his behalf. Kelly was believed by the state to have been a member of the alleged conspiracy to murder the Piechowiczes and had in fact entered an Alford[2] plea to charge of conspiracy pursuant to plea negotiations with the state.

Petitioner and Kelly were both incarcerated during the pendency of the proceedings, and had had no occasion to talk. When Kelly was brought to the Somerset County Courthouse, pursuant to a writ issued at Petitioner's request, Petitioner sought permission to interview him. Despite the fact that Petitioner had been interviewing potential defense witnesses throughout the trial, and although extensive security precautions had been taken at the courthouse, the court denied Petitioner's request. Petitioner ultimately elected not to call Kelly as a witness.

The case was submitted to the jury on May 22, 1984. That day, the jury returned verdicts of guilty on all counts.

After verdicts had been received, the trial court entertained arguments on requested instructions. Petitioner asked for, and was refused, two instructions vesting the jury

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[2] Under North Carolina v. Alford, 400 U.S. 25 (1970), Kelly pled guilty but did not admit his guilt.

with discretion in the determination of sentence. The first advised the jury that:

> it is proper for you to exercise your own moral, factual and legal judgment in determining whether that [aggravating] circumstance is sufficient in your minds to call for the punishment of death.

The second was based on former Maryland Rule 759f[3] and stated:

> You need not find a mitigating circumstance in order to impose a sentence of life imprisonment. Nothing in the law forbids you from extending mercy out of compassion or belief that life imprisonment is sufficient punishment under all the circumstances.

The court, in excising the requested instructions, explicitly opined that the jury had no discretion to show compassion or mercy.[4]

---

[3] Former Rule 759f, now Rule 4-327(e), provided:

> Recommendation of Mercy
> A jury may attach to its verdict a recommendation to the court to show mercy to a defendant. The recommendation is not binding upon the court.

[4] The question of the existence and/or extent of the jury's authority to exercise discretion in determining that the death penalty was not appropriate first arose in this case in the context of the jury voir dire. Petitioner objected on several occasions to the State's attorney repeatedly asking prospective jurors if they could impose the death penalty "if the law required" it. Standby counsel explained Petitioner's objection to the court:

> MR. CRAWFORD: Judge, what Mr. Grandison's objection to is Mr. Levitz [assistant State's attorney] said "If the law required." I don't know, I agree with him on that. If the law allowed the death penalty, yes, but not required. There is nothing in the Maryland law that requires the death penalty. It only says that under certain circumstances it may be imposed. It may be imposed by either a Judge or the jury. He is giving the implication to these people it is required.
>
> MR. LEVITZ: I totally disagree with Mr.

(cont.)

Sentencing was scheduled for Monday, May 28, 1984. Petitioner had elected to be sentenced by the jury. Petitioner and his standby counsel had agreed that counsel would handle the sentencing if that became necessary. However, on the date sentencing was scheduled to begin, counsel advised the court that he was unprepared and had been out of town since the day after the verdicts were rendered. Petitioner asked for additional time to prepare and to have counsel appointed for purposes of sentencing.

In making the request for counsel, Petitioner made his position very clear:

> THE COURT: You are asking me now to appoint Mr. Crawford to represent you?
>
> MR. GRANDISON: In the sentencing proceeding, yes, Your Honor. And, if I may add, I am not asking the Court to appoint Mr. Crawford to represent me in the sentencing proceedings to delay the trial. I am interested in leaving here with any type of sentence that the Court -- I would like to be given an opportunity to present a defense in mitigation of punishment.

The court's ruling was likewise very clear:

> THE COURT: Once the decision is made regarding self-representation, if it is properly made prior to trial, the request to change rests solely within the discretion of the trial court. The right must be timely asserted. It must be asserted before the trial starts. Of course, this is not timely asserted. Whether we

4(cont.)

> Crawford's remarks. I think the death penalty in Maryland, it is not a question of whether the jury wants to give it or doesn't want to give it. The death penalty in Maryland is specifically either required or not required, based on the findings of the jury. They are not allowed to elect what they want to do. I think if you read the death statute, that is clear.

The court ultimately concluded that the State's position was correct.

> continue with it or not, what I am inclined to do about self-representation is leave it just like it is, and let Mr. Crawford take over and handle the proceeding as standby counsel with Mr. Grandison's permission. Grandison will still be the attorney.

To standby counsel, the court stated:

> THE COURT: Keep in mind, Mr. Crawford, you are not the attorney in this. Mr. Grandison is his own attorney. You are just kind of a law clerk. Now, he can't blame it all on you because you weren't around and haven't done all these things...

The court did postpone the sentencing for eight days, but denied Petitioner's request for appointment of counsel. Just prior to the sentencing hearing itself, the court reiterated that "Mr. Grandison is again proceeding pro se, with Mr. Crawford as his standby counsel." Petitioner then reasserted his "right to terminate [his] self representation, because under this death penalty situation, it is like two trials."

At the hearing, standby counsel continued to act only at the behest of Petitioner. Most of counsel's statements and arguments were couched in terms of what Petitioner wanted him to say or object to.[5]

On June 5, Petitioner also made several challenges to the death penalty statute. Among other things, Petitioner raised questions about the burden of proof, unconstitutional restrictions on jury discretion, the manner of infliction of the

---

[5] The following quotations from the sentencing record illustrate this point:

> "I think that was all the points that Mr. Grandison had raised with me ..."; Mr. Grandison wants me to object on the ground of hearsay to all of this ..."; "... he [Petitioner] is taking exception to one of the things you said ..."; "Mr. Grandison wants me to move for a mistrial ..."

punishment and proportionality. The trial judge ruled that the death penalty statutes were in all respects constitutional, noting that this Court, by denying a writ of certiorari in the Tichnell case[6], had "said the Maryland Statute is constitutional."

ARGUMENT

I. THE DENIAL OF A REQUEST FOR LEGAL REPRESENTATION FOR A CAPITAL SENTENCING IN A STATUTORILY BIFURCATED PROCEEDING CONSTITUTES A VIOLATION OF THE SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL.

Although Petitioner is the first, and thus far, only defendant in a capital case in Maryland to have elected self representation at trial, the importance of this issue on future litigation should not be underestimated. The decision could affect any litigant in any bifurcated proceeding at which procedural rights might apply. Moreover, the importance of the right to counsel to any person facing the possibility of a death sentence can hardly be overstated. The denial of the assistance of counsel at any stage of a capital proceeding should be carefully scrutinized; if there is any ambiguity about when the right to counsel applies, such ambiguity should be clarified. This case, which presents a clear factual situation, provides an opportunity for this Court to ensure that the right to counsel is

---

[6] On May 14, 1984, this Court denied Richard Danny Tichnell's petition for a writ of certiorari. ___U.S.___, 104 S.Ct. 2374 (1984). Tichnell was the first person to receive the death penalty under the present statutory scheme in Maryland.

strictly protected.

At the outset, it should be noted that several things are not, and have never been, in dispute in this case. It is not disputed that the right to the effective assistance of counsel applies at the sentencing stage of a trial. It has never been suggested by the State or the Maryland courts that Petitioner did in fact receive the effective assistance of counsel at his sentencing. It has likewise not been disputed that Petitioner unequivocally sought the appointment of counsel for sentencing and explicitly expressed a desire to waive his right of self representation at the sentencing proceeding.[7] No claim has been made, moreover, that the appointment of counsel would have delayed the proceedings or that it was Petitioner's intention to do so.

The question presented in this case thus comes down to whether a capital sentencing in a statutorily bifurcated proceeding constitutes a "separate" proceeding, as that term has been interpreted in this Court's decisions in, inter alia, Specht v. Patterson, 386 U.S. 605 (1967) and Bullington v. Missouri, 451 U.S. 430 (1981); if it is such a separate proceeding, Petitioner was unquestionably denied the right to be represented by counsel at his sentencing.[8]

---

[7] Contrary to the Court of Appeals' statement that "Grandison and his standby counsel had agreed, after the guilty verdict, that standby counsel would handle the sentencing," 506 A.2d at 613, Petitioner advised the trial court on May 28, 1984, and standby counsel confirmed, that this agreement predated the jury's verdict.

[8] Although Petitioner specifically asserted his "right to terminate self representation, because under this death penalty situation, it is like two trials," and despite the fact that this issue was clearly presented to the Court of

The Maryland capital punishment statute, Md. Code, Art. 27, §412 et seq, and the complimentary Rule of Procedure, Rule 4-343,[9] adopted by the Court of Appeals, explicitly set forth a bifurcated procedure in capital cases. The law provides for an election to be made by the defendant of a judge or jury to determine sentence and for a hearing before the elected fact finder at which evidence is to be presented and specific findings of fact are to be made. Both the legislatively enacted statute and the court adopted Rule refer to this contemplated hearing as a "separate sentencing proceeding." Md. Code, Art. 27, §413(a); Md. Rule 4-343.

Given the nature of the sentencing proceeding in Maryland, the Court of Appeals' decision to let stand a ruling that a waiver of counsel at trial constitutes a waiver of counsel for the subsequent, separate sentencing proceeding, squarely conflicts with prior decisions of this Court.

In Specht v. Patterson, the defendant, who was convicted of a sex offense, was subjected to a hearing at which it was to be determined whether he was a habitual offender, was mentally ill, or posed a threat of bodily harm. The factual determinations made at the hearing were to be used at sentencing. The denial to the defendant of minimal procedural rights, including the right

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8(cont.)
Appeals both in Petitioner's brief and at oral argument, the appellate court did not address the question of whether the sentencing is a separate proceeding in capital cases. The court rested its decision on this issue primarily on the conclusion that Petitioner's argument was not supported by Faretta v. California, 422 U.S. 806 (1975), a case that was neither cited in the brief nor relied upon at real argument with respect to this issue.

9 At the time of Petitioner's trial, this Rule was enumerated Rule 772.

to counsel, was held to constitute a violation of the defendant's constitutional rights.

In Bullington v. Missouri, the defendant was convicted and sentenced to life imprisonment under a procedural scheme very similar to Maryland's present one. When, following a successful appeal, the case was remanded, the State sought the death penalty at the second trial. This Court ruled that the State was barred from "retrying" the issue of sentencing. The rationale for the decision was that the bifurcated sentencing was in all relevant respects like the preceding trial on the issue of guilt; the jury was required to make new findings of fact and the same standard of proof was applied. Accordingly, the jury's decision at the initial sentencing to impose life rather than death was deemed to be an "acquittal" for purposes of double jeopardy. If the bifurcated sentencing is a separate proceeding for purposes of double jeopardy, it seems obvious that it is likewise a separate proceeding for purposes of representation by counsel.

The result in this case is in fact also at odds with another recent decision of the Maryland Court of Appeals. In Harris v. State, 295 Md. 329, 455 A.2d 979 (1984), the court recognized the need for a separate waiver inquiry at the sentencing proceeding for purposes of the defendant's election of judge or jury at that proceeding. Even the dissent in that case acknowledged the fact that trial and sentencing in a capital case are separate proceedings and approved the application of waiver provisions in Maryland's rules of procedure to capital sentencing proceedings.

Despite these clear indications that the sentencing in a capital case in Maryland is a proceeding separate from the trial itself, and despite the recognized importance of the right to counsel, Petitioner was required, without specifically being advised that his initial waiver of counsel at trial would produce such a consequence, to proceed at sentencing without the assistance of counsel that he sought.

II. ABSENT A FINDING OF NECESSITY FOR SECURITY REASONS, THE RIGHT TO SELF REPRESENTATION IS INFRINGED BY THE DENIAL TO A PRO SE LITIGANT OF PERSONAL ACCESS TO THE ONLY POTENTIAL DEFENSE WITNESS AVAILABLE WHO CAN EXCULPATE THE DEFENDANT.

There is no question that the right to a fair trial includes the right to call witnesses and present a defense. U.S. Const., Amends., V and XIV; Md. Declar. of Rts., Arts. 21, 42; Washington v. Texas, 388 U.S. 14 (1967). It is generally recognized, moreover, that the right to present a defense encompasses the right to interview as well as summon witnesses, even if those witnesses are incarcerated. E.g., State v. Lerner, 308 A.2d 324 (R.I 1983); Commonwealth v. Doherty, 229 N.E. 2d 267 (Mass. 1967), cert. denied, 390 U.S. 982 (1968); Hodgins v. State. 139 Fla. 226, 190 So. 875 (1939); State v. Gangner, 73 Mont. 187, 235 P. 703 (1925).

In the ordinary case, it may not be necessary to allow the defendant personal access to witnesses. As long as the accused is represented by counsel, the responsibility for summoning and, therefore, interviewing witness falls on counsel. See Alvord v. Wainwright, ___ U.S. ___, 105 S.Ct. 355 (1985), (Marshall and Brennan, JJ, dissenting from denial of cert.). Where, as here,

however, the accused is acting as his own counsel and has, as the trial court in this case directly and frequently pointed out, full responsibility for making tactical and strategic decisions during trial, it is the accused who must be able to consult with the witnesses. The procedural rights afforded by the Constitution are personal to the accused, Faretta v. California, 422 U.S. 806, 819 (1975), and where the accused chooses to represent himself, it is all the more necessary that he personally exercise those rights. Standby counsel, as this Court has made clear, has a very limited role to play. McKaskle v. Wiggins, 465 U.S. 168 (1984). Standby counsel is not obliged to perform, nor can the defendant be forced to give up, the roles of investigator, strategist and decision-maker.

In Faretta, this Court plainly noted that the right to defend is personal, and that the allocation of strategy decisions to counsel is justified in any given case only by the accused's consent at the outset to accept counsel as his strategist and decision-maker. Id at 820.

Subsequently, in McKaskle v. Wiggins, the Court elaborated on this notion. There it was pointed out that the core of the Faretta right is the entitlement "to preserve actual control." Id 79 L.Ed.2d at 133.

> A defendant's right to self representation plainly encompasses certain specific rights to have his voice heard. The pro se defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at appropriate points in the trial.

Id. at 131. (Emphasis added).

The interviewing of witnesses and preparation of those witnesses for trial is an integral part of the trial lawyer's responsibility. See A.B.A. Standards Relating to the Defense Function, § 5.2 (App. Draft 1971).

(lawyer must decide which witnesses to call and whether and how they should be examined.) See also State v. Renshaw, 276 Md. 259, 347 A.2d 219 (1975). Because it is an essential part of the lawyer's duty, it is likewise essential that the lawyer be given the opportunity to perform that duty. Pro se litigants must be afforded the same opportunity in the absence of some compelling overriding justification.

The courts that have addressed the issue of the extent of the right to prepare a defense in the context of right to counsel cases have generally recognized that limitations on the manner in which pretrial investigations are conducted may be justifiable in some circumstances. Security has been considered a valid reason for reasonable restrictions on access to witnesses. See State v. Lerner, and other cases cited, supra at p.14.

Several factors remove this case from the class of cases restricting access to witnesses, however. The trial judge in this case explicitly denied that security was the concern motivating his decision.[10] Moreover, the record does not in fact

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[10] In the course of the discussion, Petitioner's standby counsel stated:

> "Mr. Grandison respectfully requests an opportunity to discuss with Mr. Kelly in person certain aspects of Mr. Kelly's possible testimony. It is my understanding from the Court that this was denied for I believe security reasons

(cont.)

support a finding that security interests could not be accommodated. Both Petitioner and his witness were in custody; a substantial number of well armed law enforcement officers were present, a fact attested to by the trial judge and the press; Petitioner had never been disruptive or shown any propensity to flee. He had, in addition, been conducting interviews throughout the course of the proceedings at the court house.

Decisions rendered by this Court make it clear that the right to self representation is not to be treated lightly. Unlike the situation in McKaskle,[11] the standby counsel's participation as envisioned by the trial court was not merely mechanical. The interviewing and preparation of witnesses is not a routine procedural or evidentiary matter, and the allocation of these tasks to an assistant whom the trial court referred to as

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10(cont.)

"THE COURT: No, sir, that is not the only reason."

The court had previously provided this explanation for its ruling:

> Now we are coming to the problem. Mr. Kelly is serving life plus 50 years for a crime in which it is alleged that you were involved. Now, I am not going to let the two of you get together and carry on any conversation. If you want to do it through your standby attorney, Mr. Crawford, you may do it, but I am not going to let the two of you, who are alleged to have been involved in a double murder, get together and discuss matters.
>
> There is no point in arguing it. That is it. In addition to serving life plus 50 years, he is facing, I understand, another murder. Now, I am not going to give you and this man an opportunity to get together.

11 McKaskle was a case which, this Court noted, is "not a model for future trials." 79 L.Ed.2d. at 138.

"just kind of a law clerk" was not necessary to ensure compliance with protocol or procedure. Nor was the denial of access to the witness, as the Court of Appeals asserted, a mere "condition" on the interview. 506 A.2d at 608. It was, rather, a direct interference with Petitioner's right to represent himself by allocating to a third party tasks that are at the core of a trial advocate's duties.

If pro se litigants do in fact have the right to plan their defense strategies and to make the decisions which affect their cases, they must be provided with reasonable opportunities to do so. A "condition" which reallocates to counsel the most important tasks involved in preparing and presenting a case renders the right of self representation illusory. This case thus presents circumstances sharply contrasting with those of standby counsel's overreaching in McKaskle.

The distinction between situations where the pro se defendant's conduct of the case is interfered with by standby counsel without prejudice to the ultimate presentation of the case, and those where the opportunity to perform essential duties of an advocate is absolutely denied by the court could be drawn and fully explicated in this case.

III. THE MARYLAND DEATH PENALTY STATUTE AS CONSTRUED AND APPLIED IN PETITIONER'S CASE, VIOLATES THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The Maryland capital sentencing statute, Md. Code (1957, 1982 Repl. Vol.), Art. 27, §§412-415, was enacted in 1978. Under the statute, the sentencing authority must first determine

whether one or more statutorily prescribed circumstances exist beyond a reasonable doubt. If none are found, the sentence shall be life imprisonment. §413(f). If one or more aggravating circumstances are found, the sentencing authority must then determine whether any mitigating circumstances exist by a preponderance of the evidence. §413(g). If both aggravating and mitigating circumstances are found, the sentencing authority must weigh the circumstances against each other. As for the balancing process, the statute provides:

> "Weighing mitigating and aggravating circumstances. - (1) If the court or jury finds that one or more of these mitigating circumstances exist, it shall determine whether, by a preponderance of the evidence, the mitigating circumstances outweigh the aggravating circumstances.
>
> (2) If it finds that the mitigating circumstances do not outweigh the aggravating circumstances, the sentence shall be death.
>
> (3) If it finds that the mitigating circumstances outweigh the aggravating circumstances, the sentence shall be imprisonment for life." §413(h).

Pursuant to §413(l) of the statute, the Maryland Court of Appeals adopted rules of procedure to govern sentencing proceedings, including a standard form verdict sheet. Md. Rule 4-343.[12] If the balancing process is reached, the verdict sheet requires the sentencing authority to respond "Yes" or "No" to the statement:

> "Based on the evidence, we unanimously find that it has been proven by a PREPONDERANCE OF THE EVIDENCE that

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[12] At the time Petitioner was sentenced, former Maryland Rule 772A was in force. No change material to this case exists between Rule 772A and Rule 4-343, and the language quoted in this Petition is identical. Thus, references will be made to the current rule.

> the mitigating circumstances marked "yes" in section II outweigh the aggravating circumstances marked "yes" in section I."

If the section is "completed and marked 'no.' enter 'Death'" Id.

Tichnell v. State, 287 Md. 695, 415 A.2d 830 (1980), was the first capital case under the new statute to reach the Maryland Court of Appeals. The Court reversed the sentence on the basis of a prejudicial remark by the trial judge. Id. at 743-45. Nevertheless, the Court addressed, in dicta, various aspects of the new statute including its burdens of proof. Noting that the statute does not expressly allocate the burdens of proof among the parties, the Court explained that, as a practical matter, "the State bears both the risk of nonproduction and nonpersuasion" with respect to proving the existence of aggravating circumstances while "the accused [bears] the risk of nonproduction and nonpersuasion" with respect to proving mitigating circumstances. The Court concluded:

> Finally, if the sentencing authority finds, by a preponderance of the evidence, that the mitigating circumstances do not outweigh the aggravating circumstances, the death penalty must be imposed. §413(h)H2). Because the State is attempting to establish that the imposition of the death penalty is an appropriate sentence, the statute places the risk of nonpersuasion on the prosecution with respect to whether the aggravating factors outweigh the mitigating factors. Id. at 730.

The conclusion that the State bears the risk of nonpersuasion with respect to proving that aggravating circumstances outweigh mitigating circumstances was puzzling in several respects. First, it appears to conflict with the plain language of both the statute and the court rule. See Stebbing v. Maryland, 105 S.Ct. 276, 280-281, n.6 (1984) (Marshall, J.,

dissenting from denial of cert.); Evans v. State, 304 Md. 487, 542-43, 499 A.2d 1261 (1985) (McAuliffe, J., dissenting). It also conflicts with the interpretation of the Maryland statute by the Chief Legislative Officer in the only piece of legislative history to accompany the statue, T.J. Peddicord, Memorandum to the General Assembly on Capital Punishment--Senate Bill 374 and House Bill 604 (Dec. 14, 1977). The Peddicord Memorandum provides:

> Subsection (H) of §413 requires the court or jury to weigh the aggravating and mitigating factors, assuming that some mitigation has been found to exist. If it finds that mitigation does not outweigh aggravation, the sentence shall be death. (H)(2). If it finds that mitigation does outweigh aggravation, the sentence shall be life imprisonment. (H)(3). Id. at 36.

Finally, the use of the preponderance of the evidence standard in the balancing process strongly suggest that the legislature intended to impose the risk of nonpersuasion on the defendant. See generally, Patterson v. New York, 432 U.S. 197 (1977); Mullaney v. Wilbur, 421 U.S. 684 (1975).

In Johnson v. State, 292 Md. 405, 439 A.2d 542 (1982), in which the proper interpretation of statute regarding burden of proof was directly addressed, the Court of Appeals, quoting from Tichnell, held that "'If the mitigating circumstances do not outweigh the aggravating circumstances by a preponderance of the evidence, ... then a sentence of death must be imposed.'" Id., 292 Md. at 438. See also id., at 440.

The decisions of the Court of Appeals following Johnson confirmed the court's position in Johnson that the defendant bears the ultimate burden of persuasion under §413(h). See

Thomas v. State, 301 Md. 294, 483 A.2d 6 (1984); Stebbing v. State, 299 Md. 331, 473 A.2d 903 (1984); And see Johnson v. State, 303 Md. 487, 537, 495 A.2d 1 (1985); Marziarz v. State, 302 Md. 1, 6, 485 A.2d 245 (1984); Colvin v. State, 299 Md. 88, 122, 472 A.2d 953 (1984); But see Trimble v. State, 300 Md. 387, 415, n. 16, 478 A.2d 1143 (1984).

It was this interpretation that was in force at the time of Petitioner's sentencing and which Petitioner challenged in his Motion to Strike the Notice of Intention to Seek the Sentence of Death. In instructing the jury, the trial judge tracked the language of the statute that on its face places the burden of persuasion on the defendant.

Subsequent to Petitioner's sentencing, but prior to the conclusion of his appeal, the Court of Appeals decided Foster v. State, 304 Md. 439, 499 A.2d 1236 (1985). In that case, the Court reverted to its earlier position that the Maryland statute does not place any burden of persuasion on the defendant. Id., 304 Md. 15 476-77. The Court of Appeals relied on its holding in Foster in concluding in Petitioner's case that the statute was not unconstitutional. 406 A.2d at 622-23.

Although it generally is the province of the state courts to "interpret, and where they see fit, to reinterpret" their own constitutions and statutes, Gardner v. Louisiana, 368 U.S. 157, 169 (1961), limitations are imposed on judicial reconstruction by the due process clause. A court may not use its interpretive authority as an "'obvious subterfuge to evade consideration of a federal issue.'" Mullaney v. Wilbur, 421 U.S. at 696, n.11. The

decision in the instant case is "an obvious attempt to avoid the constitutional implications of forcing a defendant to shoulder the burden of persuading the sentencing authority that he should not be put to death." See Evans v. State, 304 Md. at 545 (McAuliffe, J., dissenting).

Assuming that Petitioner's constitutional attack was meritorious, the Court's strained construction on appeal does not eliminate the unconstitutionality of Petitioner's sentence. "[W]here an accused is tried under a broad construction of an Act which would make it unconstitutional, the conviction cannot be sustained an appeal by a limiting construction which eliminates the unsconstitutional features of Act ...." Ashton v. Kentucky, 384 U.S. 195, 198 (1966). The same principle applies to sentencing statutes. See Hicks v. Oklahoma, 447 U.S. 343, 346-47 (1980).

Reconstruction may render a criminal statute unduly vague with respect to those persons convicted prior to the reconstruction.

> If the Fourteenth Amendment is violated when a person is required "to speculate as to the meaning of penal statutes," ...or to "guess at the statute's meaning and differ as to its application," ...the violation is that much greater when, because the uncertainty as to the statute's meaning is itself not revealed until the court's decision, a person is not even afforded an opportunity to engage in such speculation before committing the act in question. Bouie v. City of Columbia, 378 U.S. 347, 352 (1964).

The Maryland capital sentencing statute plainly failed to apprise "trial judges, jurors and attorneys throughout th[e] State" of the standard of proof to be applied. Evans v. State, 304 Md. at 542 (McAuliffe, J., dissenting). See also Stebbing v. Maryland,

supra, 105 S.Ct. at 280 n.11 ("The jury or court is left on its own to guess at the burden of proof on the ultimate question.") (Marshall, J., dissenting from denial of cert.). Although the vagueness "might be cured for the future by [the] authoritative judicial gloss," of the Court of Appeals, it is not cured as to Petitioner whose sentence was imposed without adequate guidance. Bouie v. City of Columbia, 378 U.S. at 353.

Even if the Maryland statute, as the Court of Appeals has now construed it, does not place the ultimate burden of proof on the accused, the fact remains that the law was not so construed at the time of Petitioner's sentencing. Moreover, twenty persons in addition to Petitioner have been sentenced to die in Maryland without the benefit of the Foster reconstruction. At least seven other states, by statute to prove that mitigating circumstances outweigh aggravating circumstances.[13] The question whether the State may require a criminal defendant to prove the ultimate impropriety of the death sentence is one that has never been addressed by this Court. It affects many defendants in several states and warrants this Court's review.

The Maryland statute, like statutes in several states, does not require proof beyond a reasonable doubt that the aggravating

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[13] The seven states are: Arizona, see Ariz. Rev. Stat. Ann. § 13-703(E) (1978) (construed in State v. Watson, 120 Ariz. 441, 586 P.2d 1253, 1258-59 (1978), cert. denied, 440 U.S. 924 (1979)); Colorado, see Colo. Rev. Stat. Ann. § 16-11-103(2)(a)(II) (Supp. 1985); Missouri, see Mo. Ann. Stat. § 565.030.4(3) § 46-18-305 (1985); Nevada, see Nev. Rev. Stat. § 200.030.4(a) (1985); Oklahoma, see 21 Okla. Stat. Ann. § 701.11 (1983); and Wyoming, Wyo. Stat. § 6-2-102(d)(i)(B) (1983).

circumstances outweigh the mitigating circumstances.[14] This issue, which has never been addressed directly by this Court, is the source of disagreement and confusion in the lower courts. See, e.g., Ford v. Strickland, 696 F.2d 804, 817-19 (11th Cir.), cert. denied, 464 U.S. 865 (1983); id. at 877-883 (Anderson & Clark, JJ., dissenting); Evans v. State, 304 Md. at 550-553 (McAuliffe, J., dissenting); Tichnell v. State, 287 Md. at 732-34; See generally Smith v. North Carolina, 459 U.S. 1056 (1982) (Stevens, J., respecting the denial of cert.); State v. Wood, 648 P.2d at 80-85; Comment, "Capital Punishment and the Burden of Proof: The Sentencing Decision," 17 Cal. W.L. Rev. 316 (1981).

Review by this Court is thus warranted to resolve the

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[14] Among the states in which the death penalty staute has been authoritatively construed not to require proof beyond a reasonable doubt are: California, see People v. Frierson, 25 Cal.3d 142, 158 Cal. Rep. 281, 599 P.2d 587, 609-610 (1979); Idaho, see State v. Sivak, 105 Idaho 900, 647 P.2d 396, 401 (1983), cert. denied, 104 S.Ct. 3591 (1984); Illinois, see People v. Garcia, 97 Ill.2d 58, 454 N.E.2d 274, 282-83, 73 Ill. Dec. 414 (1983), cert. denied, 104 S.Ct. 3555 (1984); Missouri, see State v. Boulder, 635 S.W.2d 673, 684 (Mo. 1982), cert. denied, 459 U.S. 1137 (1983); New Mexico, see State v. Finnell 101 N.M. 732, 688 P.2d 769, 772-773 (1984); and Pennsylvania, see Commonwealth v. Zettlemoyer, 500 Pa. 16, 454 A.2d 937, 963 (1982), cert. denied, 461 U.S. 970 (1983).

At least six states require proof beyond a reasonable doubt that aggravating circumstances outweigh mitigating circumstances. These states are: Arkansas, see Ark. Stat. Ann. § 41-1302(b) (1977 Repl. Vol.): Massachusetts, see Mass. Gen. Laws Ann. ch. 279, § 68 (Supp. 1985); North Carolina, see State v. McDougall, supra, 301 S.E.2d at 327; Ohio, see Ohio Rev. Stat. Ann. § 2929.03(D)(1) (1982); Utah, see State v. Wood, supra, 648 P.2d at 83-84; and Washington, see Wash. Rev. Code Ann. § 10.95.060(4) (Supp. 1986). In addition, Texas and Virginia do not use a balancing aplproach but require proof of all circumstances beyond a reasonable doubt. See Tex. Code Crim. Pro. art. 37.071(c) (Supp. 1986); Va. Code § 9.2-264.4 (1983 Repl. Vol.).

important Eighth and Fourteenth Amendment issues concerning the allocation and standard of proof in capital sentencing cases.

IV. RULINGS AND INSTRUCTIONS BY THE TRIAL COURT WHICH DEPRIVE THE JURY IN A CAPITAL CASE OF THE POWER TO SHOW COMPASSION OR EXTEND MERCY TO THE ACCUSED VIOLATE THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Throughout the proceedings in this case, the trial court took the position that if the jury failed to find that mitigating factors outweighed any aggravating factors it was required by law to impose the death sentence. The court's and prosecutor's questions on voir dire created the erroneous impression that the jury could be required to impose the death penalty; and that erroneous impression was confirmed by the court's instructions and refusal to give those requested by Petitioner. Petitioner repeatedly and strenuously argued that it was within the jury's discretion to impose a life sentence notwithstanding an inability to justify its decision under the confines of the death penalty statute's aggravating/mitigating circumstances analysis.

To the extent that limitations are placed on the jury's exercise of discretion in capital cases, those limits are imposed by virtue of consititutional parameters under the Eighth Amendment. It is to ensure that the death penalty is imposed in a consistent, rational manner that this Court has "attempted to provide standards for a constitutitonal death penalty that would serve both goals of measured, consistent application and fairness to the accused." Eddings v. Oklahoma, 455 U.S. 104, 111. (1982). Although it appears that there is some present

disagreement among members of this Court as to whether the jury has the ultimate power to reject the sentence of death after a full statutory analysis leads to the opposite conclusion, compare Smith v. North Carolina, 459 U.S. 1056 (1982) (Stevens, J., in re denial of cert.) with Brown v. California, 39 Crim. L. Rptr. 4004 (Mar. 27, 1986). (Rehnquist, J. in re stay of proceedings), it has never been held that a rational imposition of the death penalty requires concomitant rational imposition of a life sentence in its stead. Indeed, a plurality of the Court explicitly rejected that argument in Gregg v. Georgia, 423 U.S. 153, 199 (1976), stating ". . . nothing in any of our cases suggests that the decision to afford an individual defendant mercy violates the Constitution."

The power of the jury to show compassion or extend mercy has particular significance in Maryland. The practice of permitting the jury to add a recommendation of mercy to its verdict is "of great antiquity." LaGuardia v. State, 190 Md. 450, 58 A.2d 913 (1948). Under previous laws in Maryland, only the court could sentence a convicted murderer to the death penalty; nevertheless, the legislature gave the jury that heard the case the right to attach to its verdict the words "without capital punishment." Laws 1916, Chap. 214, codified in Code 1957, Art. 27, §413 (1967 Repl. Vol.). The Rules of Procedure echo this longstanding Maryland policy of allowing the jury to show mercy by providing that "A jury may attach to its verdict a recommendation to the court to show mercy to the defendant ..." Md. Rule 4-327(e).

There is no reason in principle why the concept of

sentencing applicable in non-capital cases should not apply in a death penalty proceeding. Indeed, it is difficult to conceive of a justification for allowing a court or jury to show compassion when an individual faces a maximum one year sentence for possession of marijuana, but not allowing compassion to play a part in determining whether a person should be executed. This Court has noted, in fact, that ". . . it is preferable not to impose restrictions." Zant v. Stephens, 462 U.S. 862 (1983).

Nothing in the Maryland statutes or in decisions of this Court prohibit the exercise of discretion to show compassion or extend mercy. Indeed, some concern has been expressed that a recognition of the jury's power to grant mercy might result in "unleashed" discretion. Lockett v. Ohio, 438 U.S. 586, 622-23, 629-31 (1978) (White and Rehnquist, JJ, concurring in part, dissenting in part).

The fear of a return to unbridled discretion, a concern which was articulated by the Court of Appeals in this case, 406 A.2d at 616 is, however, unwarranted. Unlike the potential arbitrariness problems identified in Woodson v. North Carolina, 420 U.S. 280, 303-305 (1978), there is no reason to believe that a jury given the opportunity to extend mercy would render an unreliable verdict as to either guilt/innocence or sentence. The danger that a jury would render an acquittal not because of a failure of proof, but upon the belief that the only available sentence - death - is inappropriate, is in fact decreased where the jury is advised of its broad role in determining the appropriateness of the death sentence.

A recommendation of mercy represents a kind of aggregate jury determination based on the jury's review of the totality of aggravating and mitigating circumstances. Thus, contrary to the assertion that a recommendation of this sort represents unbridled jury discretion, it represents the essential overarching perspective of the jury based on the totality of evidence offered during the sentencing hearing. As the "link between contemporary community values and the penal system," Gregg 428 U.S. at 181, the jury alone is fit to make this judgment.

Most important of all, the recommendation of mercy by a Maryland jury would increase the reliability of the jury's decision, and so advance the Court's concern for rationally differentiating between those deserving the death penalty and all others. In Caldwell v. Mississippi, ____ U.S. ____, 105 S.Ct. 2633 (1985), this Court overturned an imposition of death when it determined that the jury might have relied on a state prosecutor's suggestion that the State Supreme Court, as reviewing authority, and not the jury, was the true determiner of whether the defendant would die. No reviewing court, the majority noted, was an adequate substitute for the jury's judgment. Id. at 4746. Caldwell suggests that jury reliability is a byproduct of the jury's understanding of its duties and obligations. The power to recommend mercy would, if anything, increase the jury's sense of responsibility for its own role as decisionmaker. The jury's choice of foregoing a mercy recommendation should carry the presumption that after weighing the totality of mitigating and aggravating circumstances, the

jury consciously has decided that capital punishment is appropriate and fair. Such a discretionary right conforms to constitutional requirements and can only enhance the reliability of the process leading to ultimate judgment.

Given the importance of this issue, the concern expressed by members of the Court about the propriety of the jury being either granted or denied the power to extend mercy, and the attendant confusion over the constitutionality of practices and procedures that follow one line of reason over another, it is in the public interest to resolve the issue. This case presents an appropriate vehicle for addressing the issue. The question was clearly presented to the trial court in two contexts - during voir dire and during the sentencing instructions stage. The trial court took a definite position on the issue, ruling that the jury did not have the discretion to extend mercy. The Court of Appeals, adopting the trial court's reasoning, has set a clear precedent on the issue, finding:

> To have instructed the jury as Grandison requested would have negated the carefully thought out sentencing procedure designed to meet the constitutional requirements set forth by the Supreme Court by injecting the risk of arbitrary and capricious action into the proceeding ... In certain circumstances, the imposition of the death sentence is the only legally possible outcome under the statute. 406 A.2d at 616.

Accordingly, Petitioner respectfully requests that this Honorable Court grant his petition for a writ of certiorari .

Respectfully submitted,

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